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ILLINOIS COMMERCE COMMISSION

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STATE OF ILLINOIS

ILLINOIS
COMMERCE COMMISSION

2003 SEP 23 P 1:12

CHIEF CLERK'S OFFICE

COTTONWOOD FARM, INC.
(an Ill. Corporation),
Petitioner,
vs.

EXELON CORPORATION, and
COM ED. (a division of Exelon
Corporation formerly known as
Commonwealth Edison Company)
Respondents.

Case No. 02-0662

**PETITIONER'S RESPONSE TO RESPONDENT'S RESPONSE TO MOTION FOR
SUMMARY JUDGMENT**

I

**COMMONWEALTH EDISON IS ESTOPPED FROM PRESENTING A TIME BAR
THEORY AGAINST COTTONWOOD.**

A

**UNDER THE LAW OF ESTOPPEL, WHERE ONE OF TWO INNOCENT
PERSONS MUST SUFFER, HE WHOSE ACT OCCASIONED LOSS MUST BEAR IT.**

Elements or essentials of estoppel include change of position of the parties so that the party against whom estoppel is invoked has received a profit or benefit or party invoking estoppel has changed his position to his detriment. Conduct intended to deceive or of such nature that reasonably prudent person would have been deceived, Black's Law Dictionary, 4th Edition, (1957) p. 648.

"If one of two parties must suffer from the fraud of a third person the loss must fall on the one who enabled the third person to commit the fraud." Dombro vs. Hugo, 19 NE 2nd 183,370 Ill. 381 (1938). Followed in West Lake Finance Company vs. Oak Park Motors, 166 NE 2nd 23,19 Ill 2nd 66 (1960).

“An estoppel does not necessarily require a fraudulent intent; it is sufficient that a fraudulent or unjust effect results from a defendant's conduct.” Stewart vs. O'Bryan, 8 Ill.Dec. 633,365 NE 2nd 1019,50 Ill.App. 3rd 108 (4th Dist.1977).

“A fraudulent intent is not necessary to estoppel. Although fraud is an essential element, it is sufficient that a fraudulent or unjust effect results from defendant's conduct.” Cessna vs. Montgomery, 344 NE 2nd 447,63 Ill. 2nd 71 (1976).

B

PARTIPILO VS. PULLMAN IS FACTUALLY INCONSISTENT WITH THE CASE AT BAR.

Partipilo vs. Pullman is not factually consistent with the case before this Tribunal.

ComEd is not a governmental unit, and the rules that may or may not apply to governmental agencies do not apply to ComEd. In relevant detail, the Partipilo case states that “a person who has been unjustly enriched at the expense of another is required to make restitution to the other”.

C

COTTONWOOD'S LACK OF DISCOVERY WAS CAUSED BY COMED

That attached hereto and made a part hereof is the affidavit of Peter Barenie of Cottonwood Farm; his affidavit presents a copy of each bill for the time in question and for the meter in question. These bills did not include an address for the meter until June 25, 1998; on that date ComEd changed the meter number from W934674 to 997934674, and changed their billing method and format.

How can anyone be reasonably equipped to determine which bill is for which meter? How many meters are there? Where are they located? ComEd is in the business of providing electrical service, and billing for that service. Cottonwood is not.

D

WHO IS THE INNOCENT PARTY?

ComEd argues that they somehow are the innocent party. ComEd violated ICC rules when electrical service was ordered by the Gums and the billing was charged to Cottonwood; Cottonwood paid that billing. ComEd received the benefit in the form of cash payments Cottonwood received nothing in return.

CONCLUSION

This action is brought pursuant to Statute and ICC Rules. For a period of twelve (12) years the Respondent, ComEd, billed and received monies from Cottonwood Farm for electrical service that it did not provide.

This Tribunal must enter Summary Judgment in favor of Cottonwood Farm, Inc. in the amount of \$18,182.03 plus compounded statutory interest and for such other relief as this Tribunal shall deem meet and just.

Respectfully submitted



Richard H. Balog

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To: Ms. Elizabeth Rolando
Chief Clerk
Illinois Commerce Commission
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Springfield, IL 62701

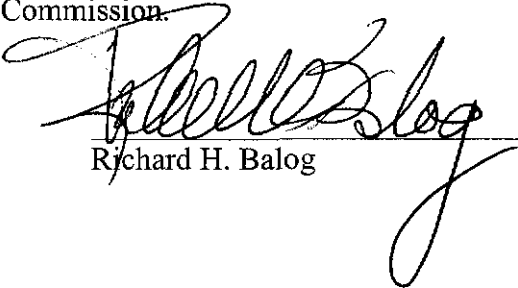
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Judge Terrance A. Hilliard
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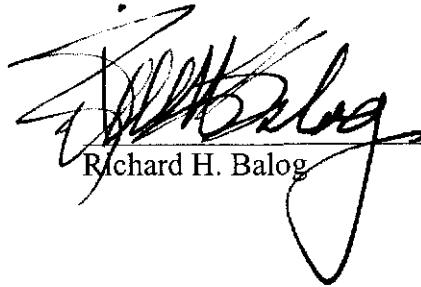
PROOF OF FILING

On September 22, 2003, I have caused the attached Response to be filed with the
Chief Clerk of the Illinois Commerce Commission.


Richard H. Balog

PROOF OF SERVICE

The undersigned certifies that a the foregoing Response was served upon the Illinois Commerce Commission and attorney for Exelon Corporation to the above cause by enclosing the same in an envelope and addressed to such Attorney at his last known business address, with postage fully prepaid and by depositing said envelope in a United States Post Office Mail Box in Geneva, Illinois on the 22nd day of September, 2003.


Richard H. Balog

Signed and Sworn to before me this
day of September, 2003.

Notary Public

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